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6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 JEFFREY E. HOFFMAN,

No. 3:07-CV-2417 MHP

11 Plaintiff,

12 vs.

13 THOMAS R. LLOYD, an individual,  
14 EDWARD L. BLUM, an individual, and  
15 DOES 1 through 20, inclusive,,

16 Defendants.

17 THOMAS LLOYD,

18 Cross-Plaintiff,

19 vs.

20 JEFFREY E. HOFFMAN, dba H&B  
21 PROPERTIES; H&B PROPERTIES, LLC;  
J. EDWARDS INVESTMENT GROUP,  
22 INC., and NORCAL FINANCIAL, INC.,

23 Cross-Defendants.

24  
25 **APPELLANT'S EXCERPTS OF RECORD ON APPEAL**

26 **VOLUME II**  
27  
28

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DATED: July 13, 2007

GOLDBERG, STINNETT, DAVIS & LINCHEY  
A Professional Corporation

By: /s/ Dennis D. Davis  
Attorneys for Appellant Jeffrey E. Hoffman

**DOCUMENT 8**

**COPY**

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
BEFORE THE HONORABLE THOMAS E. CARLSON, JUDGE

In Re:	)	Case No. 04-32921 TEC
	)	Chapter 11
THOMAS LLOYD,	)	
	)	
Debtor.	)	
	)	
JEFFREY E. HOFFMAN,	)	Adv. No. 05-03328
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THOMAS R. LLOYD, an individual;	)	<u>TRIAL</u>
EDWARD L. BLUM, an individual;	)	(Transcript of complete
and DOES 1 through 20 inclusive,	)	proceedings except for
	)	closing arguments)
Defendants.	)	
	)	
AND RELATED CROSS-ACTION,	)	
	)	
Cross-Defendants.	)	Tuesday, February 28, 2006
	)	San Francisco, California

Appearances:

For the Plaintiff:	Pahl & Gosselin, P.C. By: Stephen D. Pahl, Esq. 160 West Santa Clara Street, 14 <sup>th</sup> Floor San Jose, California 95113-1700
For Defendant Thomas R. Lloyd:	Goodrich & Associates By: Jeffrey J. Goodrich, Esq. 336 Bon Air Center, Suite 335 Greenbrae, California 94904
For Defendant Blum:	Phillips Greenberg & Hauser, LLP By: Jerry R. Hauser, Esq. Four Embarcadero Center, 39 <sup>th</sup> Floor San Francisco, California 94111

Appearances continued:

Digital Court  
Recorder:

United States Bankruptcy Court  
Clerk of the Court  
Gordon Hom  
235 Pine Street, 23rd Floor (94104)  
Post Office Box 7341  
San Francisco, California 94120-7341  
(415) 268-2366

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I N D E X

## Witnesses:

	Direct	Cross	Redirect	Recross
Jeff Hoffman				
By Mr. Pahl:	4		83	
By Mr. Goodrich:		30		85
Julie Gustavson				
By Mr. Pahl:	88			
By Mr. Hauser:		94		
By Mr. Goodrich:		125		
Todd Rothbard				
By Mr. Paul:	131			
By Mr. Goodrich:		141		
By Mr. Hauser:		147		
By the Court:	151			
Edward Blum				
By Mr. Goodrich:	154			
By Mr. Pahl:		167		
Thomas Lloyd				
By Mr. Goodrich:	179		202	
By Mr. Pahl:		190		

## Exhibits:

Received in Evidence

None.

*Trial*

4

1 Tuesday, February 28, 2006

9:47 o'clock a.m.

2 P R O C E E D I N G S

3 THE CLERK: All rise.

4 THE COURT: Please be seated. Good morning.

5 THE CLERK: The matter of Hoffman versus Lloyd.

6 MR. GOODRICH: Good morning, Your Honor. Jeff  
7 Goodrich appearing for defendant and cross-plaintiff.

8 THE COURT: Good morning.

9 MR. PAHL: Good morning, Your Honor. Stephen Paul,  
10 Paul and Gosselin, appearing for plaintiff and cross-defendant  
11 H&B Properties.

12 THE COURT: Okay. I read your briefs. We had a  
13 summary judgment motion and the issue that's before us today. I  
14 think it probably would be best to get to this, get started as  
15 quickly as possible. Are there any preliminary issues?

16 MR. PAHL: None, Your Honor.

17 MR. GOODRICH: I don't believe so.

18 THE COURT: The exhibits are all -

19 MR. GOODRICH: Correct.

20 THE COURT: - agreed upon?

21 MR. GOODRICH: Yes.

22 THE COURT: Okay. Is there - I don't want to hear the  
23 argument over again. Is there anything that either of you want  
24 to stress by way of opening statement following, in light of the  
25 ruling on the summary judgment motion?



*Trial*

5

1 MR. PAHL: No, Your Honor.

2 MR. GOODRICH: No, Your Honor.

3 THE COURT: Okay. I think in this case you are  
4 seeking to enforce the -

5 MR. PAHL: Correct, Your Honor. I think we agreed -

6 THE COURT: - the release. And I think you probably  
7 ought to go first.

8 MR. PAHL: That's fine.

9 THE COURT: Okay.

10 MR. PAHL: We'll call Jeffrey Hoffman as our first  
11 witness.

12 MR. GOODRICH: Your Honor?

13 THE COURT: Yes.

14 MR. GOODRICH: I believe we should exclude witnesses  
15 other than parties.

16 MR. PAHL: Your Honor, -

17 THE COURT: Is she a party?

18 MS. GUSTAVSON: No.

19 MR. PAHL: Well, she is the general counsel of H&B  
20 Properties. As such, she's a corporate representative and is  
21 certainly entitled to be here.

22 THE COURT: Probably so.

23 Okay. Is this Mr. Blum here?

24 MR. HAUSER: No, Your Honor. It's Jerry Hauser. I  
25 represent Ed Blum.

*Hoffman - Direct/Pahl*

6

1 THE COURT: Okay.

2 MR. HAUSER: Sorry.

3 THE COURT: All right. Because I was going to say  
4 you're probably each going to get one of these exceptions.

5 Okay, go ahead.

6 JEFF HOFFMAN, PLAINTIFF'S WITNESS, SWORN

7 THE WITNESS: Yes.

8 THE CLERK: Please be seated. Please state your full  
9 name and address for the record, please.

10 THE WITNESS: Name is Jeff Hoffman. 6138 North Ennis  
11 Boulevard, Fresno, California 93704.

12 MR. PAHL: And, Your Honor, do you have the Court's  
13 courtesy copy - which is a copy of all the exhibits.

14 THE COURT: I have not seen them yet, but I think I'm  
15 just about to get them.

16 MR. PAHL: And we have a set that has been premarked  
17 that I was going to give up.

18 THE COURT: That's fine.

19 DIRECT EXAMINATION

20 BY MR. PAHL:

21 Q. Now, Mr. Hoffman, I've now set in front of you Exhibits A  
22 through H for your - that we'll be referring to this morning.

23 And, Mr. Hoffman, what is your relationship with H&B  
24 Properties?

25 A. H&B Properties is managed - which is a limited liability

*Hoffman - Direct/Pahl*

7

1 company managed by J. Edwards Investment Group, Inc. I am the  
2 owner of J. Edwards Investment Group, Inc.

3 Q. And J. Edwards is the manager then of H&B? It is  
4 essentially a subsidiary?

5 A. I don't know if the term "subsidiary" - but, yes, that's  
6 correct.

7 Q. And when was J. Edwards formed?

8 A. It - it incorporated, I don't know the exact date as to when  
9 it actually incorporated.

10 Q. In the last few years?

11 A. Yes.

12 Q. Okay. And H&B Properties is a limited liability company?

13 A. Correct.

14 Q. And when was H&B Properties formed?

15 A. Within a couple of years as well, some time in - oh, I would  
16 say that to be, I believe, '03.

17 Q. What is the purpose of H&B Properties? What business does  
18 it engage in?

19 A. Buying and selling property.

20 Q. You personally contracted with Mr. Lloyd to purchase a piece  
21 of real estate in 2003?

22 A. That's correct.

23 Q. Okay. I want to direct your attention to what's been  
24 premarked as Exhibit A. And this is a PRDS, real estate  
25 purchase contract, and the buyer is identified as J. E. Hoffman?

*Hoffman - Direct/Pahl*

8

1 A. Correct.

2 Q. Is that you?

3 A. That is me.

4 Q. Okay. And how was it that you became familiar with the  
5 availability of this property at 940 Elizabeth Street?

6 A. A broker had contacted me.

7 Q. And who was the broker?

8 A. Name was Asher Robertson.

9 Q. And do you know - have you known Asher Robertson before this  
10 transaction?

11 A. Yes, I had.

12 Q. And what is your contact with Mr. Robertson? What is his  
13 relationship to you or to H&B?

14 A. No relationship other than an independent broker who will  
15 once in a while bring a deal to me.

16 Q. So he approached you?

17 A. Correct.

18 Q. And what did he tell you about the property?

19 A. Had a situation where I believe it was in foreclosure. He -  
20 and I believe what was needed was someone that would come in and  
21 buy it and would be able to utilize their credit in order to  
22 obtain financing on it and cure the delinquencies and pay any  
23 and all other fees that were associated with it.

24 Q. And did you agree to do that?

25 A. Yes, I did.

*Hoffman - Direct/Pahl*

9

1 Q. And does Exhibit A reflect your offer to purchase the  
2 property for the amount of \$900,000?

3 A. Correct.

4 Q. Did you ever meet Mr. Lloyd prior to preparing this Exhibit  
5 A?

6 A. No.

7 Q. Now this contract is dated May 28th, 2003?

8 A. Okay.

9 Q. It's the fourth line down.

10 A. Yes.

11 Q. Okay. And did this agreement come with several further  
12 attachments, such as -- and I'll just make reference to page 7,  
13 the as-is addendum as well as a further addendum, a CAR  
14 addendum?

15 A. Yes.

16 MR. GOODRICH: Objection, leading.

17 BY MR. PAHL:

18 Q. The purchase price says \$900,000. Did you then pay off all  
19 the -- or assume or pay off all the existing liens on the  
20 property?

21 A. Yes, I did.

22 Q. And did you put a new loan on the property?

23 A. Yes.

24 Q. Did you pay all the closing costs?

25 A. The closing costs were deducted out of -- I suppose one would

*Hoffman - Direct/Pahl*

10

1 look at it as such - as out of the buyers, yes.

2 Q. And did Mr. Robertson get a fee?

3 A. Yes, he did.

4 Q. Was that also paid for out of the buyer?

5 A. Yes.

6 Q. Were there delinquent real property taxes?

7 A. I believe there was, yes.

8 Q. And you indicated that the first mortgage was in  
9 foreclosure?

10 A. Yes.

11 Q. Did - as part of this acquisition, did Mr. Lloyd also  
12 receive moneys?

13 A. Yes, he did.

14 Q. In cash -- cash funds?

15 A. Through the close of escrow.

16 Q. Did Mr. Lloyd contribute any moneys to this transaction?

17 A. No.

18 Q. Now as part of this transaction did you agree to lease the  
19 property back to Mr. Lloyd for a period of time?

20 A. Yes, I did.

21 Q. Directing your attention over to Exhibit B, do you have  
22 Exhibit B in front of you?

23 A. Yes.

24 Q. That's a residential lease after-sale agreement?

25 A. Yes, it is.

*Hoffman - Direct/Pahl*

11

1 Q. And does your signature appear on the fourth page of that  
2 document?

3 A. Yes.

4 Q. And the term of this lease was to commence at the close of  
5 escrow?

6 A. Whatever it states in there, the date of the -

7 Q. Well, I was going to ask -

8 A. - term.

9 Q. Paragraph 2, it indicates the close-of-escrow date as  
10 scheduled for June 30th of 2003. Do you see that?

11 A. I believe it closed much later than that.

12 Q. In fact, it closed some time in August?

13 A. Yes.

14 Q. The - in paragraph 4, the rent is reflected as \$3595?

15 A. Yes.

16 Q. Was that an amount of rent that you set as the, now, the  
17 landlord?

18 A. Yes.

19 Q. And this was a month-to-month tenancy?

20 A. Correct.

21 Q. Does Mr. Robertson in your - in the transactions you've been  
22 associated with him, does he assist in setting the rent amounts?

23 A. He finds the clients through whether - excuse me - whatever  
24 means, I don't know, if it's through his - the real estate  
25 company with which he works or how he locates them. But, in any

*Hoffman - Direct/Pahl*

12

1 event, he winds up with a particular client and will then look  
2 for, I suppose, on the other side, an investor client that is  
3 willing to do the transaction. And that's basically what had  
4 happened here.

5 So in the negotiations relative to most of the  
6 numbers, it's really him cutting the deal with his client and  
7 bringing - and, if you will, pitching it to me to see if I will  
8 accept it.

9 Q. Was there a late fee affiliated with this residential lease  
10 after sale in the event that payments were not made on a timely  
11 basis?

12 A. There should be. Yes, as a rule.

13 Q. And if you can help us out and see if you can find it for  
14 us -

15 A. Number 9.

16 Q. Number 9? Two hundred and fifteen dollars, seventy-four  
17 cents?

18 A. Correct.

19 Q. Okay. At the time you executed Exhibit B had you met Mr.  
20 Lloyd?

21 A. No.

22 Q. Had you ever spoken to Mr. Lloyd?

23 A. No.

24 Q. Now after the transaction was consummated and Mr. Lloyd  
25 became a tenant, did he make any lease payments or any rental



*Hoffman - Direct/Pahl*

13

1 payments?

2 A. None.

3 Q. Never made a rental payment?

4 A. Never.

5 Q. Did you have any conversations with Mr. Lloyd at some point  
6 asking him to begin making his rental payments?

7 A. Absolutely.

8 Q. And what was his response?

9 A. I can't say on each individual occasion what it would be,  
10 but it was always something to buy more time, telling me, 'Well,  
11 it's in the mail' type of thing, 'I'll get it. I'm working on  
12 it. I'm doing this' or 'I'm doing that.'

13 Q. During the entire time that Mr. Lloyd occupied the 940  
14 Elizabeth Street premises after the close of escrow, did he ever  
15 pay any rent?

16 A. As I say, he's never paid. Never paid any rent.

17 Q. Never paid any rent?

18 A. Never has paid a dime.

19 Q. Okay. Directing your attention over to Exhibit C, if I  
20 might. This is entitled an "Option Agreement?"

21 A. Correct.

22 Q. And did you sign this Option Agreement?

23 A. Yes, I did.

24 Q. How does this Option Agreement fit into the purchase  
25 agreement and the lease agreement?

*Hoffman - Direct/Pahl*

14

1 A. The transaction is structured in a fashion whereby what he's  
2 looking for is he's looking for an investor such as H&B to  
3 acquire the property, utilizing its credit to borrow the moneys  
4 necessary to cure any and all ills; lease it back to Mr. Lloyd  
5 so he remains in the premises or on the premises and later on  
6 has the ability to, through an option of either acquiring it  
7 back or liquidating the property, or whatever he so desires.

8 Q. This has an option period that commences on June 30th of  
9 2003 and expires under its own terms on June 30th of 2005?

10 A. Correct.

11 Q. So it's a two-year option period?

12 A. That's correct.

13 Q. And it indicates that Mr. Lloyd was required to exercise the  
14 option, however, no later than April 15th of 2005?

15 A. That's correct.

16 Q. I want to direct your attention, if I might, to the second  
17 page under the "Other Terms and Conditions" paragraph, Section

18 13. Do you see that?

19 A. I see it.

20 Q. In the second numbered - or the subnumbered paragraph,  
21 that'd be 13, subparagraph 2, who drafted this paragraph which  
22 had the, "Option shall remain in full force until all terms and  
23 conditions set forth" - terminates if it's in breach? Who  
24 drafted that language?

25 A. It had been Mr. Robertson.

*Hoffman - Direct/Pahl*

15

1 Q. Okay. And "Any breach under the terms of the residential  
2 lease" - "residential lease after-sale agreement shall make the  
3 option null and void"?

4 A. Correct.

5 Q. In light of the fact that Mr. Robertson didn't pay any  
6 moneys to you for rent, did you view that as a breach of the  
7 residential lease after-sale agreement?

8 A. Yes.

9 Q. So after - when you started calling Mr. Robertson for his  
10 rent, you viewed the Option Agreement then as already being  
11 void?

12 A. It was in default and at that point I was still willing to  
13 work with him, but I did want income. I did want some  
14 compensation to start flowing through.

15 Q. Directing your attention over to Exhibit D and it's entitled  
16 "Grant Deed"?

17 A. Yes.

18 Q. Is this a copy of the Grant Deed that was provided to you by  
19 Mr. Lloyd upon close of the property?

20 A. Yes. This would have gone through escrow.

21 Q. And it reflects a closing date at the top, a recording date  
22 of August 25, 2003?

23 A. Correct.

24 Q. Is that your best recollection as to when this whole  
25 transaction finally came together?

*Hoffman - Direct/Pahl*

16

1 A. That's when it was actually recorded and that would have  
2 been the date of the - or the close of escrow.

3 Q. Now you indicated earlier that Mr. Lloyd never paid any rent  
4 of any type to you after August 25 of 2003?

5 A. That's correct.

6 Q. As a result, did you initiate an unlawful detainer action?

7 A. I did.

8 Q. Directing your attention over to Exhibit E?

9 A. Okay.

10 Q. This is a three-day notice to pay rent or quit. And it is  
11 dated May 27th, 2004.

12 A. Okay.

13 Q. Do you see that?

14 A. Yes. I'm looking for the date here.

15 Q. The date's -

16 A. Oh, yes, I see it. Yes, yes, yes.

17 Q. Is that your signature?

18 A. Yes, it is.

19 Q. Okay. Why did you wait from August of 2003 until May of  
20 2004 to implement a three-day notice to pay rent or quit?

21 A. Again, as I say, there was many conversations relative to  
22 the fact of how he was going to be able to make good on what our  
23 initial understanding of the transaction, what was also our  
24 written understanding of the transaction, and so we kept going  
25 on and on and on with further and further stories until such a

*Hoffman - Direct/Pahl*

17

1 point in time where I had no other choice but to take  
2 possession.

3 Q. I note that the three-day notice reflects in the second  
4 paragraph - or actually the first full paragraph an amount due  
5 and unpaid of a little over \$41,800?

6 A. That's correct.

7 Q. And I note that the payment shall be made to H&B Properties,  
8 LLC. Do you see that?

9 A. Yes.

10 Q. Had this property been transferred to H&B Properties?

11 A. Yes, it was.

12 Q. Do you know when that occurred?

13 A. I don't.

14 Q. Some time between August of '03 and May of '04?

15 A. It required - the lender required me to be the initial  
16 purchaser.

17 Q. Okay. After the three-day notice was served upon Mr. Lloyd,  
18 was an unlawful detainer action commenced?

19 A. Yes.

20 Q. So he did not pay the \$41,000?

21 A. No.

22 Q. Directing your attention over to Exhibit F, is this a copy  
23 of the Complaint for Unlawful Detainer that was filed on behalf  
24 of H&B Properties against Mr. Lloyd?

25 A. Yes.

*Hoffman - Direct/Pahl*

18

1 Q. And this was commenced by Todd Rothbard?

2 A. Correct.

3 Q. Okay. And did the Unlawful Detainer Complaint ever go to  
4 trial?

5 A. Yes, it did - well, it - actually we had it set. I believe  
6 we never made it there because we settled.

7 Q. So it was settled before the complaint and unlawful detainer  
8 was tried?

9 A. Exactly, but not before, I think, the trial date.

10 Q. Did - after the Complaint and Unlawful Detainer and was  
11 served, did you have any conversations with Mr. Lloyd concerning  
12 resolution of the case?

13 A. Yes.

14 Q. When - how many conversations with Mr. Lloyd did you have?

15 A. Numerous conversations.

16 Q. Were they telephonic, were they in person?

17 A. Telephonic, always; in person, once.

18 Q. Okay. When you had conversations with Mr. Lloyd either  
19 telephonically or in person that one time, was anyone else  
20 present?

21 A. I couldn't say whether they were or not.

22 Q. You don't remember?

23 A. No, I don't.

24 Q. Okay. The one time you had a conversation with Mr. Lloyd in  
25 person, when was that?

*Hoffman - Direct/Pahl*

19

1 A. Mid-summer and I believe it was mid-July.

2 Q. And where did that meeting take place?

3 A. It was in Fresno -

4 THE COURT: And that's 2004?

5 THE WITNESS: That's correct.

6 It was an Applebee's restaurant in Fresno, California.

7 BY MR. PAHL:

8 Q. So Mr. Lloyd drove down from San Francisco to Fresno to meet  
9 with you?

10 A. Correct.

11 Q. He didn't say he was down there for some other reason?

12 A. No. Specifically to meet with me.

13 Q. Was this meeting promulgated - was it preceded by a  
14 telephone conversation between you and Mr. Lloyd setting up that  
15 meeting?

16 A. Yes, it was.

17 Q. And what was the - what was your understanding of the  
18 purpose of the meeting when you set up the meeting?

19 A. We were pretty well tired of the battles, if you will, back  
20 and forth, and we wanted to settle.

21 Q. Okay. And so you met at Applebee's?

22 A. Correct.

23 Q. And when you met at Applebee's what was the subject of the  
24 conversation between you and Mr. Lloyd?

25 A. Predominantly the fact that we both were interested in

*Hoffman - Direct/Pahl*

20

1 settling. He had problems relative - it went back and forth.  
2 He had a problem relative to wanting to settle, because he was  
3 being advised by his counsel, which was Ed Blum - Ed Blum, to  
4 the fact that Ed's contention was the whole thing could be  
5 rescinded.

6 He had to weigh that out in his mind as to whether Ed  
7 was a hundred percent sure that that's a fact versus cutting a  
8 deal with me, if you will. And so we went back and forth on  
9 that. And we agreed upon the close of our meeting, shook hands  
10 and said: Okay, we will instruct Blum to commence forward with  
11 putting a settlement together.

12 Q. And what was the deal that you and Mr. Lloyd -

13 THE COURT: You met pers- - your counsel wasn't there?  
14 You two just met directly?

15 THE WITNESS: Just ourselves, yeah.

16 THE COURT: Okay.

17 BY MR. PAHL:

18 Q. And what was the deal that you and Mr. Lloyd struck  
19 personally?

20 A. That I would still grant him the ability to buy it back,  
21 obviously relative to any and all demands that were going to  
22 come through, which at that point in time there was a  
23 significant amount of additional moneys that had accrued, and  
24 that I would give him 90 days within which to perform.

25 Q. And at that juncture did you believe you had to provide to



*Hoffman - Direct/Pahl*

21

1 Mr. Lloyd an additional 90 days in which to exercise his option?

2 A. I don't feel I had to. But, again, there had been enough  
3 conversations bandied around back and forth relative to how far  
4 they're willing to get into this litigation, if you will, that's  
5 kind of what was being bandied around, I didn't - he didn't want  
6 anything to do with it, I don't believe, any more than I did.  
7 We wanted to settle it.

8 So between the two of us, we - we both felt it was in  
9 our best interest if he had the ability of going and buying it  
10 back. So, no, but I don't have to - in my mind I didn't have to  
11 because we were so - this was beyond just a small breach. We  
12 were, you know, a year and a half out.

13 Q. And during the 90 days that Mr. Blum was going - excuse me -  
14 that Mr. Lloyd was going to be able to continue to reside in the  
15 premises, was he going to pay you rent?

16 A. I don't recall what our - I don't recall what was in the  
17 agreement on that, but presumably the rent would obviously still  
18 continue to tick away.

19 Q. Did Mr. Lloyd ever use the words "home equity sales  
20 contract" to you?

21 A. That was the thing that was difficult for us. As I say, he  
22 - he's weighing out in his mind that Mr. - his counsel had told  
23 him that he felt as though he could unwind this transaction. He  
24 had to weigh out in his mind as to whether - you know, whether  
25 that's really true, is it possible. Again, he's not an

*Hoffman - Direct/Pahl*

22

1 attorney, nor am I. So between the two of us we're looking at  
2 this and saying: We do know one thing, it's going to require a  
3 tremendous amount more litigation, of which neither one of us  
4 want.

5 Q. During your Applebee's conversation you indicated that Mr.  
6 Lloyd told you that Mr. Blum was not in favor of resolving the  
7 matter?

8 A. Oh, that's absolute, yeah.

9 Q. And that was made expressly clear to you by Mr. Lloyd?

10 A. Yes.

11 Q. Did Mr. Lloyd tell you that Mr. Blum didn't think the  
12 transaction that was done was even legal?

13 A. No. He -- he made it very clear that he felt it was not.

14 Q. And by undone, what did you understand Mr. Lloyd to be  
15 saying in terms of what would occur if you undid the  
16 transaction?

17 A. In essence, we'd -- title would revert back to him and we  
18 would have to make some obvious type of settlement, or whatever.  
19 I don't know the exact -- how it would all come about. But the --  
20 the issue is, is the fact that under our contractual  
21 arrangement, basically saying that all the contractual  
22 arrangement we had was basically null and void, useless, if you  
23 can unwind it.

24 Q. I'd like to direct your attention to Exhibit G.

25 A. Okay.

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23

1 Q. Should be your last exhibit there. And is that - that's  
2 entitled "Settlement and Mutual Release Agreement"?

3 A. Correct.

4 Q. Do you have that in front of you?

5 A. Yes, I do.

6 Q. Directing your attention to the last page, page 5, is that  
7 your signature on - signed for H&B Properties as well as J.  
8 Edwards as well as individually?

9 A. Correct.

10 Q. And Ms. Gustavson's signature is right below yours?

11 A. Correct.

12 Q. Who drafted this Settlement and Mutual Release Agreement?

13 A. I believe it was a mutual effort between Lloyd's attorney  
14 and inhouse.

15 A. Ms. Gustavson and Mr. Blum?

16 A. Yes.

17 Q. Okay. During the time between your Applebee's conversation  
18 with Mr. Lloyd and signing what is now Exhibit G, did you  
19 personally have any conversations with Mr. Blum?

20 A. Countless.

21 Q. Countless, meaning more than one?

22 A. Oh, yes.

23 Q. More than five?

24 A. Yes.

25 Q. I'll keep going. More than ten?

*Hoffman - Direct/Pahl*

24

1 A. I - I can't say the exact number, but I do know there was -  
2 there was back-and-forth conversation, yes.

3 Q. Was there a general substance to your conversations? In  
4 other words, was there a general tenor as to what the subject  
5 matter was related to your conversations?

6 A. He - again, as I say, he did not want to - he was not  
7 heavily inclined to want to settle this because of the fact,  
8 again, as Ed Blum said to me, you know, he believes it's  
9 rescindable under the equity sales contract provisions of the  
10 law, which under - whatever, like I say, there's a whole section  
11 on that. He felt that it was rescindable.

12 I told him that - and, again, if this was before the  
13 meeting with Tom Lloyd, my conversation with him at that point  
14 was that we - I felt that if Tom and I were to get together, we  
15 could settle it. I felt that person - you know, the two of us  
16 probably could settle it. But, on the other hand, I've got his  
17 attorney who is feeling as though that he should - his legal  
18 advice should be such that maybe he shouldn't.

19 Q. And was that the tenor of all the conversations you had with  
20 Mr. Blum?

21 A. Until what date?

22 Q. Till the date you signed the settlement agreement.

23 A. Yes. That and bandied around, like I say, the - you know,  
24 what it was going to take to settle it. In other words,  
25 monetarily what's it going to take for them to come back and -

*Hoffman - Direct/Pahl*

25

1 and exercise their option.

2 Q. When you -- you had Ms. -- you had Mr. Rothbard representing  
3 you on the unlawful detainer, you had Ms. Gustavson working out  
4 the language of the settlement agreement, why were you talking  
5 to Mr. Blum?

6 A. Probably much to -- I just -- I'm a hands-on person. I would  
7 prefer and -- most of the times I would prefer dealing person- --  
8 face to face with the individual which would have been, say,  
9 like Tom, rather than letting attorneys battle it out. I feel  
10 as though -- I probably feel it's a little more productive if the  
11 two of us talk and then go back and tell our attorneys what our  
12 agreement is and see if they can't then finalize it.

13 Q. Did you and Mr. Blum ever agree as to the amount of money it  
14 would acquire -- require to exercise the option within the 90  
15 days?

16 A. The specific number had never been sat down, down to the T  
17 and figured out exactly what number it was going to be. But,  
18 yes, we did talk numbers in terms of what --

19 THE COURT: Can I interject here? You know, you know  
20 these documents better than I. I've read them only a second,  
21 but what is the option price?

22 THE WITNESS: That's what he -- I think he's asking me  
23 right now.

24 THE COURT: I don't see it in the option.

25 THE WITNESS: In this here?

*Hoffman - Direct/Pahl*

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1 THE COURT: Yeah. And, see, I don't see a price,  
2 but --

3 THE WITNESS: Well, --

4 THE COURT: -- I may have just missed it.

5 THE WITNESS: The initial thing, had the contract been  
6 adhered to, the option price would have been the moneys that  
7 were acquired and expended, thereby being his expenses. In  
8 other words, the close of the escrow and everything else  
9 relative to any -- the offsets of what other income we may have  
10 gotten back from title, or whatever. So that the fees that we  
11 initially had gotten in the initial purchase transaction were  
12 net to us. It was not that minus, you know, another 3,000, or  
13 whatever. I think the -- I don't recall the exact amount we made  
14 on the --

15 THE COURT: In other words, you were going to be made  
16 whole?

17 THE WITNESS: Absolutely.

18 THE COURT: Just for what you put in?

19 THE WITNESS: Yes.

20 THE COURT: And the compensation would come from the  
21 option price itself --

22 MR. PAHL: The additional \$15,000.

23 THE COURT: -- and any rent?

24 THE WITNESS: Yes.

25 BY MR. PAHL:

*Hoffman - Direct/Pahl*

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1 Q. And then the great question so we'll finish it up with:  
2 After - after that's been voided and you've got a new deal, the  
3 Applebee's deal we'll call it, -

4 A. Right.

5 Q. - what was the option price that was agreed upon, if one was  
6 agreed upon, between you and Mr. Lloyd or you and Mr. Blum?

7 A. Lloyd wasn't really so much relative - was not as much  
8 concerned about the fact of how much it was going to be. He -  
9 we had discussed the fact that it was a considerable amount over  
10 what we initially had into it and initially what the initial  
11 option would have been had everything been adhered to -  
12 significantly different.

13 He wasn't so much interested in that as just being  
14 able to exercise his option, period. And that was really more  
15 of the concern, not money. Just: Look, I want to go back. I  
16 want to be able to have that ability to buy it back.

17 Q. The Settlement and Mutual Release Agreement doesn't provide  
18 a price?

19 A. Correct.

20 Q. And it just says the option will be exercisable, and it  
21 talks about - it has to be exercisable within 90 days of July  
22 12th?

23 A. Which is the day, I believe, if I'm not mistaken, I think  
24 that might be the very day with which Tom and I had met.

25 Q. Directing your attention, if I might, on Exhibit G to page

*Hoffman - Direct/Pahl*

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1 3, paragraph 4, and you see that the stipulation was going to be  
2 held for 90 days from July 12th for the entry of an unlawful  
3 detainer?

4 A. Correct.

5 Q. And in paragraph 5 there was the - essentially reinstatement  
6 of the option?

7 A. Yes.

8 Q. And it says the option price to be, in paragraph B, "By  
9 paying all moneys now due H&B as well as those which come due  
10 during the 90-day forbearance period as the results of Lloyd's  
11 status as holdover tenant, and paying of all existing debt  
12 within the 90-day period." Do you see that?

13 A. Correct.

14 Q. Okay. Directing your attention, if I might, on page - the  
15 same document, Exhibit G, this time page 2, subparagraph G,  
16 where it indicates - this is in the recital section - where it  
17 indicates that Lloyd filed an answer claiming that the sales  
18 transaction was a disguised security device and therefore  
19 unenforceable. Do you see that?

20 A. Yes, I do.

21 Q. When you signed this did you read that sentence?

22 A. Yes, I did.

23 Q. And was it your understanding at the time you signed this  
24 agreement that this was making reference to the equity sales -

25 MR. GOODRICH: Objection, calls for - that's a leading



*Hoffman - Direct/Pahl*

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1 question.

2 MR. PAHL: Going for his state of mind, Your Honor.

3 MR. GOODRICH: You can't do it by a leading question.

4 You can ask his state of mind.

5 THE COURT: Sustained.

6 BY MR. PAHL:

7 Q. Did you have any thoughts when you read Exhibit G - excuse  
8 me - paragraph G in the recital section of the settlement  
9 agreement?

10 A. This was clearly Lloyd's attorney believing that the entire  
11 transaction was rescindable -

12 MR. GOODRICH: Objection. Calls - move to strike.  
13 He's now speculating as to what Lloyd's attorney said about  
14 this. There's no evidence that -

15 THE COURT: I think the question was what it meant to  
16 you.

17 MR. GOODRICH: Right.

18 THE COURT: Well, it's not just speculation in that.  
19 We had conversations relative to this, prior to this. So this  
20 is not just speculation. I mean he - like I say, he had made it  
21 well known to me as to what the status of it was. And, as I  
22 said, and reluctantly gave the okay, if you will, to his client  
23 to move forward.

24 BY MR. PAHL:

25 Q. Now at the bottom of page -

*Hoffman - Cross/Goodrich*

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1 THE COURT: Is anybody going to introduce the answer?

2 MR. PAHL: Yes.

3 THE COURT: Okay.

4 BY MR. PAHL:

5 Q. On page 2 at the very bottom, there's a release and it makes  
6 reference to Section 1542. Do you see that?

7 A. Yes, I do.

8 Q. Was it your desire to resolve everything?

9 A. That is exactly what our thoughts of it were, so that we  
10 would not wind up like we are here today.

11 Q. Was a general release important to you in reaching the  
12 agreement that you did with Mr. Lloyd?

13 A. That's the only reason I would have entered into one.

14 Q. So but for this general release, you wouldn't have entered  
15 into this settlement agreement?

16 A. I entered into a settlement agreement to avoid any further  
17 litigation and especially since I knew that Blum was - felt in  
18 his mind he had - he was pretty strongly against me relative to  
19 the rescissionable aspects of it. This was worth it to me to  
20 cut a deal and enter into another 90-day extension.

21 MR. PAHL: I have no further questions, Your Honor.

22 Thank you.

23 THE COURT: Okay. Cross-exam.

24 CROSS-EXAMINATION

25 BY MR. GOODRICH:

*Hoffman - Cross/Goodrich*

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1 Q. Good morning, Mr. Hoffman.

2 A. Hi.

3 Q. You have a degree from Cal Poly Technic in architecture,  
4 correct?

5 A. Correct.

6 Q. And you've been a real estate investor, developer,  
7 experienced real estate person ever since then, in fact before  
8 you went to school, correct?

9 A. I wouldn't say before I went to school.

10 Q. Well, while you were in school you were actually doing real  
11 estate investments, correct?

12 A. I built some houses.

13 Q. Okay.

14 A. Yes.

15 Q. And since then you've done nothing but real estate for a  
16 living?

17 A. Yes.

18 Q. And all aspects of real estate?

19 A. Correct.

20 Q. And specific to the issues in this case, you've both been a  
21 lender and a buyer of residential property, correct?

22 A. I have done loans, but that's never really been my forte. I  
23 mean I only do it if I bought a trust deed or maybe made a loan  
24 to someone and who - with whom gave me a trust deed, but that's  
25 never really been our - my business.

*Hoffman - Cross/Goodrich*

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1 Q. Okay. Have you invested in entities that have provided such  
2 hard-money loans?

3 A. No, not invested in - no.

4 Q. Okay. Have you yourself made hard-money loans?

5 A. That's what I just said, yeah, I have. Yeah.

6 Q. And by "hard money," what would you mean?

7 A. I prefer the term equity lending, if you will. It's - an  
8 equity lender is an individual who is not so much concerned with  
9 the creditworthiness of the borrower as much as he is what's the  
10 underlying asset in case there is a breach.

11 Q. And that's exactly what happened here. You weren't  
12 interested in Mr. Lloyd's ability to repay the loan from income,  
13 correct?

14 A. This is not - this is not a loan to Mr. Lloyd.

15 Q. You didn't view it as a loan?

16 A. No. Number one, what we're doing is going in and purchasing  
17 the property, using my credit, if you will, to borrow from  
18 Greenpoint Mortgage. And Greenpoint Mortgage provided the  
19 financing, not Jeff Hoffman.

20 Q. Okay. And for this two-year period Mr. Lloyd remains in  
21 possession of the home and has to pay all taxes, insurance, and  
22 maintenance, correct?

23 A. That would be correct.

24 Q. Okay. And at any time during that two-year period, if he's  
25 in compliance with the terms of the lease, he can buy back the

*Hoffman - Cross/Goodrich*

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1 home under -

2 A. That's correct.

3 Q. - the option?

4 And the purchase price under the option, your  
5 testimony was today, it was basically everything that you had  
6 been out of pocket for at the time you bought the property plus  
7 the option agreement, plus any unpaid lease obligations,  
8 correct?

9 A. That would be correct - well, it wouldn't be - no, we  
10 wouldn't look at it as any unpaid lease obligations because if  
11 you're not paying on your lease then you now made it null and  
12 void.

13 Q. Okay. So you're saying that if he misses one lease payment  
14 then there is no option and he forfeits his equity?

15 A. From - from a technical standpoint, that could have been  
16 done. But, as you can see, this was a year and a half, so we  
17 didn't rush to judgment on this.

18 Q. Okay. So you actually were trying to work with him over  
19 this year-and-a-half period and at some point, you don't know  
20 when, you were no longer willing to work with him?

21 A. Correct.

22 Q. Would it be fair to say that in the first year that if he  
23 came to you wanting to buy it back, you would have agreed that  
24 he could buy it back?

25 MR. PAHL: I'm going to object. It calls for

*Hoffman - Cross/Goodrich*

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1 speculation of the witness.

2 MR. GOODRICH: I'm just trying to get the idea of when  
3 in his mind -

4 THE COURT: I think you already got the idea of what's  
5 going on.

6 MR. GOODRICH: Okay.

7 THE COURT: Move on.

8 BY MR. GOODRICH:

9 Q. With respect to the purchase agreement, can you tell me if  
10 Mr. Lloyd had wanted to buy back his property the day after  
11 escrow closed, approximately how much money would he have to  
12 pay?

13 A. I would have to take the settlement sheet at the close of  
14 escrow and determine if there was any additional costs to me at  
15 that point in time, which I don't know if there were any, but in  
16 the event, those would be offset under that. And he could  
17 purchase it back for that as long as he provided - you know, he  
18 paid for any and all costs associated with the repurchase or  
19 whatever the other end of his transaction was.

20 If he was repurchasing it, there would be an escrow  
21 presumably again. He would have to pay for that in order to buy  
22 it back because, again, we're looking at it from our standpoint.  
23 We went in under a - for a single fee, did this transaction,  
24 gave him the option, and we were satisfied with that until such  
25 time as he went into breach.

*Hoffman - Cross/Goodrich*

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1 Q. I'm going to hand you our witness book and ask you to take a  
2 look at Exhibit 18, which is a proof of claim that I believe  
3 your company filed.

4 A. Can you give me that number again?

5 Q. Exhibit 18. It's a proof of claim.

6 A. The very last one; is that correct? Okay.

7 Q. The very last one, yes.

8 A. With the U.S. Court?

9 Q. Correct. It's -- on the first page, is that your signature?

10 A. Yes, it is.

11 Q. And that's a signature on behalf of H&B Properties, LLC and  
12 Jeffrey Hoffman?

13 A. Yes.

14 Q. Take a look at -- this is an extensive document and it has a  
15 number of attachments. The second attachment is identified as  
16 Exhibit B and it starts with page 18.20.

17 A. I had Exhibit A as 18.34, so does it go backwards?

18 Q. No. I think what you're looking at is a different exhibit.

19 A. I've gone too -- well, it's no longer the one 18 heading,  
20 that the 18 header, and then I look through here. And, as I  
21 say, I go to 18.34 which at the top was the residential lease  
22 which says "Exhibit A."

23 MR. GOODRICH: If I may approach the witness, Your  
24 Honor?

25 THE WITNESS: Here. See, this right here.

*Hoffman - Cross/Goodrich*

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1           So they don't necessarily go - okay. All right.

2 BY MR. GOODRICH:

3 Q. Is this a correct copy of the closing statement on your  
4 purchase of the property from my client?

5 A. Yes.

6 Q. Okay. Now taking a look at that closing statement, you  
7 mentioned that in looking at the closing statement you could  
8 tell us how much Mr. Lloyd would have to pay you to get the  
9 property back if he tried to do so, let's say, August 26th, the  
10 day after escrow closed.

11 A. Okay.

12 Q. Okay. So how - can you take a look at that, and I have a  
13 calculator if you need it, and tell us what the option price is?

14 A. Well, you have to pay off the principal of the first.

15 Q. Is that line -

16 A. Which would be 640,000, which is the principal -

17 Q. Okay.

18 A. - amount of the new loan. Plus any and all costs associated  
19 with his escrow, which I'm looking at, you know, there's \$603,  
20 you know, there's miscellaneous fees, as you can see them in  
21 there. On both sides you can see the - like there's a home  
22 warranty I see on the other side, which shows as a seller's -  
23 you know, a part of the seller's transaction. But, again, we  
24 combine seller and buyer, all the costs associated with doing  
25 the transaction. And so that's what we looked at, is all of

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1 those. So all of those costs associated with that, plus - less  
2 any offsets.

3 Q. What would the offsets be?

4 A. We borrowed - from NorCal Financial we borrowed I don't know  
5 if it was 262,- or 264,-, and that's - and I don't recall the  
6 exact amount. It shows here buyer's funds of 262,-, but there  
7 may have already been a deposit that had been given to them, so  
8 I don't know. But we borrowed the additional funds required for  
9 the downpayment.

10 Q. So you're saying that that would be deducted -

11 A. Yes.

12 Q. - from your total option price?

13 A. Correct.

14 Q. That's because the \$262,000 didn't go to Mr. Lloyd, it went  
15 into the escrow and went back out to NorCal, right?

16 A. Correct.

17 Q. So the purchase price was just artificially \$900,000 so you  
18 could get the loan from Greenpoint up to 640,000?

19 A. I don't know if Mr. Lloyd had an appraisal done or who did  
20 an appraisal, but there was an appraisal done and I don't -

21 Q. But my question is you didn't -

22 A. Well, I'm -

23 Q. - really pay \$900,000?

24 A. I'm - I'm trying to answer your question.

25 Q. Okay.

*Hoffman - Cross/Goodrich*

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1 A. Yes, I did pay 900,000, but there were -

2 Q. But usually the buyer -

3 A. No. Let's - let me finish, please.

4 Q. Okay.

5 A. We paid 900,000. I borrowed from NorCal 262,000. Now if  
6 that obligation is retired because it's paid back to them, Lloyd  
7 certainly is not obligated to me to pay me for 262,000 that I  
8 did not inure to the benefit of. So, no, he doesn't have to pay  
9 that.

10 Q. Okay. Let's go through the lease. You say escrow closed in  
11 August - late August, I think, and the grant deed shows a  
12 recording date of August 25th. And I think we just saw the  
13 settlement statement said August 25th as the closing date. Does  
14 that refresh your recollection as to the exact date that escrow  
15 closed?

16 A. I'm sorry. I'm looking for the documents as you're talking  
17 to me.

18 Q. Sure.

19 A. The document would speak for itself; whatever the  
20 recordation date is of - on the grant deed would be the close of  
21 escrow, -

22 Q. Okay.

23 A. - and I'm sure matches the settlement agreement.

24 Q. Now the monthly rent in the lease is \$3,595.64. So after a  
25 year's time, which would be August at the time you executed the

*Hoffman - Cross/Goodrich*

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1 settlement agreement, there would be 12 months of rent payments  
2 due, correct?

3 A. Okay.

4 Q. In fact, I think you executed the settlement agreement on or  
5 before August 4th, correct?

6 A. Okay.

7 Q. So at the time of the execution of the settlement agreement  
8 there wasn't even 12 months of rent that had accrued under your  
9 lease, correct?

10 A. I believe the lease started, states here, June 30th.

11 Q. Well, I think your testimony on direct was that it was  
12 actually from the commencement of the close of escrow, which is  
13 exactly what the residential lease says. You can take a look  
14 at -

15 A. I'm looking at the residential lease. Okay. It states here  
16 close of escrow scheduled to occur on June 30th of '03.

17 Q. Right. But the term of the lease, you see that? The term  
18 begins on the date that escrow closes, -

19 A. Okay.

20 Q. - on the purchase-and-sale agreement. You've just testified  
21 that that date was August 25th, correct?

22 A. Okay.

23 Q. So is it correct to say that your rent as of August 4th was  
24 no more than 12 months of rent plus late charges?

25 A. If that's what you say that's, you know, -

*Hoffman - Cross/Goodrich*

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1 Q. Okay. Any reason to believe -

2 A. Yeah.

3 Q. - that that's not correct?

4 A. No.

5 Q. Okay. As of August 4th, 2004 had you paid anything out of  
6 pocket for insurance for the subject property?

7 MR. PAHL: Your Honor, I'm going to move to - I've  
8 allowed -

9 THE COURT: What is all this related to?

10 MR. GOODRICH: Well, -

11 THE COURT: What does it have to do with the waiver?  
12 We're only dealing with the waiver issue.

13 MR. GOODRICH: Well, we're trying the issue of the  
14 enforceability of the settlement agreement. And one issue was  
15 whether the waiver is enforceable, but another is whether there  
16 has been any consideration for what Mr. Lloyd gave up if, in  
17 fact, the waiver is enforceable. There has been an issue raised  
18 as to whether there's a breach, a material breach of the  
19 settlement agreement, excusing performance.

20 We believe we have a case strictly on the waiver  
21 issue, but certainly we have in our pleadings on the issue of  
22 settlement raised the issue that this is unenforceable because  
23 really Lloyd didn't get anything for it. The amounts that we'll  
24 show in this settlement agreement were actually in excess of  
25 what he owed under the lease.

*Hoffman - Cross/Goodrich*

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1           There was no liquidation of his claim in his favor.  
2           There was nothing he got. The 90 days doesn't get him anything  
3           because he would have had that time had he set aside the whole  
4           transaction under 1695. So it goes to the issue of  
5           consideration.

6           THE COURT: I think it's very hard for you to set  
7           aside a settlement of a disputed question in trial on the theory  
8           that you made a bad settlement in the sense and if you had gone  
9           to trial you would have won a hundred percent.

10          MR. GOODRICH: I think you're right. What I'm saying  
11          is -

12          THE COURT: Because the one thing he obviously gave up  
13          is the right to go to trial. Very shortly thereafter you get a  
14          determination of the unlawful detainer.

15          MR. GOODRICH: Right. We're not changing that number.  
16          What we're trying to show is that the number that was later  
17          submitted in October, which we'll show is over \$155,000, doesn't  
18          bear any resemblance to the claims that actually these parties  
19          agreed on in settlement. So that goes to the breach.

20          THE COURT: I don't know how that - you know,  
21          consideration doesn't have to be reasonably equivalent  
22          consideration.

23          MR. GOODRICH: Right.

24          THE COURT: And I think what you're - I mean the only  
25          argument that I can see here is the one thing he - the parties

*Hoffman - Cross/Goodrich*

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1 avoided is ejection from the premises. Mr. Lloyd avoided  
2 ejection from the premises by doing this.

3 MR. GOODRICH: Right.

4 THE COURT: And he got at least - he got at least some  
5 assurance that he had - that the option period was extended  
6 notwithstanding the alleged breach of the lease.

7 MR. GOODRICH: Right.

8 THE COURT: Now I don't know how things that happen  
9 later have anything to do with that.

10 MR. GOODRICH: Well, I guess -

11 THE COURT: Demands that are made later. And I don't  
12 know how you can say, 'Well, you know you didn't get anything  
13 because he could have avoided the whole lease.' That's again  
14 suggesting that, you know, 'We want to get out of the settlement  
15 agreement because had we gone to trial we would have won.'

16 MR. GOODRICH: Well, we're - it's really more to the  
17 issue of the amount that was claimed in October.

18 THE COURT: And why is that relevant to the settlement  
19 agreement?

20 MR. GOODRICH: Because then you get to an issue of was  
21 there a material breach of the settlement. In other words, it's  
22 our position that the settlement agreement as it's written and  
23 as we understood it said that at the time Mr. Lloyd wants to  
24 exercise his option, he pays the \$60,000 stipulated judgment.  
25 And this is what I'm showing is basically the rent and the

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1 insurance and the taxes. That's what the 60,000 -

2 THE COURT: So basically your argument is that you -  
3 you basically tendered performance under the option?

4 MR. GOODRICH: Right. And in response we were told,  
5 "Well, you have to pay this NorCal claim," and that's where I'm  
6 going, is that -

7 THE COURT: All right.

8 MR. GOODRICH: - the NorCal claim is entirely a  
9 different animal.

10 MR. PAHL: Your Honor, may I be heard?

11 THE COURT: Yes.

12 MR. PAHL: Thank you. First, if you look at the  
13 complaint filed by counsel, there is no - there is no claim.  
14 There is no claim for relief for breach of the settlement  
15 agreement. It's not even - it's not even at issue in this  
16 action.

17 Secondly, with regard to - the settlement agreement  
18 itself is the operative document. And the settlement agreement  
19 itself does not provide for a hard number. It provides for a  
20 reimbursement of all moneys that were out plus, you know, the  
21 costs that have been incurred.

22 So we're going beyond the scope of the pleadings that  
23 are before the Court and certainly way beyond the settlement  
24 agreement to now assert, for the very first time, that there was  
25 somehow some sort of a breach of settlement agreement. In order

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1 to show a breach, a — the prima facie case would require that  
2 counsel show that they were ready, willing, and able to  
3 exercise. There's no showing.

4 So what they're now asserting — trying to do is assert  
5 a breach, but they're forgetting the prima facial aspect of the  
6 breach. Even if you were to allow a breach-of-contract  
7 argument, which I don't think is appropriate in this forum at  
8 this time, but even if you were to allow that as a predicate to  
9 showing actions by H&B, you first have to show that the  
10 cross-complainant is ready, willing, and able to perform.

11 THE COURT: Well, I never understood this to be the  
12 issue to be treated at this phase. I thought we were dealing  
13 only with whether the — this waiver was void for the reasons  
14 that we've already dealt with in the summary judgment, that it's  
15 simply unenforceable under the law because it wasn't express and  
16 it wasn't — well, you say it's not waivable at all.

17 MR. GOODRICH: Right.

18 THE COURT: And I said, well, it's — anything can be  
19 waived by a settlement. The question is did the settlement  
20 address it specifically enough and was the waiver involved  
21 therein knowing and intelligent.

22 MR. GOODRICH: Right. If we're only going to look at  
23 that issue and reserve whatever we've raised in the pleadings,  
24 I'm comfortable with that, because we did raise it in the  
25 pleadings.



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1 THE COURT: I think we'd be best off to stick to that  
2 because that's the way this trial was set up for today.

3 MR. GOODRICH: Okay. Thank you.

4 THE COURT: And if there's anything - you know, if  
5 there's anything left of this, we can deal with the question of  
6 what was raised in the complaint. But I don't have it in my  
7 mind in front of me today and I could see why Mr. Pahl is not  
8 ready for this issue today because I think it's getting out of  
9 the box that we set up for today, a bit.

10 MR. GOODRICH: Okay.

11 BY MR. GOODRICH:

12 Q. I think your testimony here today is that you did not  
13 discuss with Mr. Lloyd any provisions of Section 1695 of the  
14 Civil Code, that those discussions happened with Mr. Blum?

15 A. I believe I didn't state that. I stated completely  
16 different than that. I stated the fact that, yes, Lloyd does  
17 not know codes much - probably much more so than I know codes,  
18 but the issue of rescissionability and that it could be  
19 rescinded and that the transaction was illegal was certainly  
20 bandied around during the entire discussion.

21 It's what made - you know, it's what made him  
22 hesitate, if you will, you know, as to whether - to continue  
23 forward. He has one individual - and he's got both of us  
24 knowing that, you know, in - we want to settle. He also does  
25 have his counsel telling him, you know, 'This is what I think

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1 your legal course is.' So.

2 Q. I'm going to read to you something from a hearing in front  
3 of this Court on August 26th, 2005, and it's from Mr. Pahl. He  
4 says - he's talking about this case, he says, "Unlike the  
5 Lacusta [sic] case," which is another case that Mr. Pahl had  
6 tried here, "where the issue of 1695 was a subject of settlement  
7 negotiations, there is no claim by anybody that 1695 was ever  
8 the subject of discussion or comment relating to the settlement  
9 agreement."

10 Was Mr. Pahl misinformed when he said that?

11 A. Are you referring to this case?

12 Q. Yeah. That's what he told the judge. That's what he told  
13 us.

14 A. Read it to me -

15 Q. On August -

16 A. Read that to me again, if you would, please.

17 Q. "Unlike the Lacusta [sic] case," which is a case Mr. Pahl  
18 tried, -

19 A. Uh-huh.

20 Q. - "where the issue of 1695 was a subject of settlement  
21 negotiations, there is no claim by anybody that 1695 was ever  
22 the subject of discussion or comment relating to the settlement  
23 agreement."

24 A. Well, it was definitely - no, it was definitely bandied  
25 around relative to that, I mean certainly Ed Blum and I had

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1 numerous conversations. He obviously had informed his client of  
2 such or he wouldn't be bringing that to the table during our  
3 meeting at Applebee's. So I mean, no, clearly that was -

4 Q. Are you -

5 A. - bandied around.

6 Q. Are you maybe misunderstanding the nature of the claims that  
7 Mr. Blum raised and Mr. Lloyd understood, -

8 A. Can you -

9 Q. - assuming that those were 1695 claims that you were  
10 discussing with him?

11 A. He put it - no, we were directed to it. I mean my counsel  
12 and myself, inhouse counsel. No, we looked it up. We wanted to  
13 know what are we dealing with.

14 Q. When did you do that?

15 A. I don't know exactly when, but it was during the time when -  
16 I mean, if you will, put it in this term, but I mean kind of  
17 like threatened or having it jammed down me saying that, you  
18 know, I don't - you know, 'You better settle on our terms or  
19 you're going to have some serious problems,' no, I mean it was  
20 brought to our attention where we seriously infest- - looked  
21 into it.

22 Q. Who brought it to your attention?

23 A. On that particular instance that would have been Blum  
24 bringing it to my attention and it was before I ever met with -  
25 with Tom Lloyd.

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1 Q. So you were kind of concerned about 1695?

2 A. Yeah. Obviously, all I see is further litigation or a  
3 potential - there wasn't any really - real litigation outside of  
4 the UD, but I saw where it was going to blow up. All's I wanted  
5 to do is - I didn't want it to happen.

6 Q. And yet you kept no notes of any of these conversations, did  
7 you?

8 A. They're in my head. I mean, no, I didn't write anything  
9 down.

10 Q. And you produced no correspondence from your lawyer, Ms.  
11 Gustavson, from yourself, from anybody suggesting that there had  
12 been any discussions about 1695 of the Civil Code prior to the  
13 settlement agreement being executed, correct?

14 A. Well, you - when - during my deposition -

15 Q. No, just the answer to that question.

16 A. Let me - I am trying to answer it if I can. You  
17 acknowledged to me that he knew that because you asked me why I  
18 didn't send him the five-day notice of rescission, so you know  
19 that obviously Ed Blum was at - otherwise you wouldn't have  
20 asked me that.

21 Q. No, no. You're recalling a document that I showed you that  
22 came, according to you, from your files. And it was a notice of  
23 rescission, which I told you my client had never seen and never  
24 signed.

25 A. His signature -

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1 Q. That's -

2 A. - is on it.

3 Q. His signature is on it, huh? Do you recall testifying that  
4 you never saw him sign that document.

5 A. I didn't see him sign any of the documents.

6 Q. Then how do you know it's his signature?

7 A. Are you going to tell me that's not his signature?

8 MR. PAHL: Your Honor, I think we've descended into an  
9 argumentative stage between counsel and the witness.

10 THE COURT: I also think that this doesn't deal with  
11 the waiver, because that would be compliance, not waiver.

12 MR. GOODRICH: Right.

13 BY MR. GOODRICH:

14 Q. So with respect to 1695, your answer is there were no  
15 letters or correspondence addressing 1695 prior to execution of  
16 the settlement agreement, correct?

17 A. There was correspondence. It was telephonic.

18 Q. I'm sorry.

19 A. There was correspondence.

20 Q. There was correspondence?

21 A. I told you, we spoke numerous times. If that's not - that  
22 is corresponding. That's -

23 THE COURT: He doesn't mean written correspondence.  
24 He means conversation.

25 BY MR. GOODRICH:

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1 Q. Okay. So there's no writing anywhere mentioning anything  
2 about 1695 prior to your execution of the settlement agreement?

3 A. Not - no.

4 Q. And there's -

5 A. I mean whatever's been produced is -

6 Q. And there's no writing anywhere mentioning the home equity  
7 sales contract?

8 A. No. But if you look in the settlement itself, the  
9 settlement - in fact -

10 Q. Go ahead. Take a look at it. I'm curious to know where it  
11 is.

12 A. In here they're even going on to say the sales transaction  
13 was a disguised security device, so -

14 Q. So when you saw those words it was your understanding that  
15 that was a claim under Section 1695 of the Civil Code?

16 A. No. No. That's not - not what I'm contending. But what  
17 I'm contending is that - he hit it from two prongs, if you will.  
18 One, number one, it's either - either he's going to attack me on  
19 the fact that it's that or he's going to attack me on the fact  
20 that it's under a 1695. Let's say - I know more in terms of not  
21 so much as a code name as much as I do "home equity sales  
22 contract." Buying up, the purchasing of a property that has had  
23 an NOD filed on it, which is a notice of default, that's what  
24 qualifies you or puts you within that section.

25 Q. So you're saying that before you filed the unlawful detainer

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1 you were aware of the provisions of 1695 of the Civil Code?

2 A. Correct.

3 Q. So you didn't first learn about it from Mr. Blum?

4 A. Well, no, that's - no, that's what I told you, obviously,  
5 because we even had a five-day in there.

6 Q. Okay. On the same date, August 26, 2005, your counsel told  
7 the Court, "My understanding from the client, although we'd not  
8 had a long discussion over it obviously, is that 1695 was not an  
9 issue and the client was unaware of the provisions of 1695."

10 Again, was your attorney mistaken when he made that  
11 representation?

12 A. Well, and that is written by whom?

13 Q. This is what Mr. Pahl said on the record in August just a  
14 few months ago.

15 A. Well, I would have to say that, no, that's not - I'm sorry.  
16 Blum - as I say, the two of them both knew - I shouldn't - you  
17 know, predominantly Blum. I mean he was the one who, you know,  
18 would wave the flag and bandied around and say, 'This is what's  
19 going to happen to you,' blah-blah-blah and that type of thing.  
20 He was not really inclined to want to have his client settle,  
21 so -

22 Q. So you said that there were two prongs to his attack. One  
23 was that it was avoidable because it was a disguised security  
24 device and the second was under 1695. Is that a fair  
25 characterization?

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1 A. Right.

2 Q. Can you -

3 A. The latter being the most important.

4 Q. Can you identify any writing from Mr. Blum prior to the  
5 settlement agreement where he described his claims as including  
6 1695?

7 A. Conversations with myself. Conversations during the  
8 settlement which involved Mr. Rothbard and discussions with,  
9 like I say, my inhouse counsel as well.

10 I mean everybody knew what everybody was talking  
11 about. It's not like this is some mystery out there nobody  
12 knows and everybody's - you know, we're talking about these are  
13 all attorneys. You know, they -

14 Q. So the answer is no, there is no writing from Mr. Blum?

15 A. There is no writing from him, no. He didn't - but there's  
16 no writing from Mr. Blum relative pretty much to anything.

17 Q. Well, take a look at Exhibit 10, which is his answer.

18 A. That's your book?

19 Q. Correct.

20 A. Okay. Appears to me that -

21 Q. Do you recognize that as the answer filed by Mr. Blum in the  
22 unlawful-detainer proceeding?

23 A. Yes.

24 Q. Can you tell me where in the answer Mr. Blum, in your mind,  
25 was seeking to set aside the transaction under the Home Equity



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1 Sales Contract Act?

2 A. I would certainly point to J.

3 Q. What part of J?

4 A. Well, making the claim that I'm not the true and lawful  
5 owner of the subject property.

6 And then you go down to the very bottom, it says, "The  
7 subject transaction, which plaintiff claims to have become owner  
8 of record, title are void and illegal." Well, void - there  
9 again what would make it void and illegal? The provisions under  
10 1695 would certainly make it that.

11 Q. Okay. So you're saying that you understood that as an  
12 affirmative defense, the last part of it, that it was void and  
13 illegal, was based on the idea that - his allegation that you  
14 had not given Mr. Lloyd a proper notice of a five-day right to  
15 rescind?

16 A. Correct.

17 Q. So when you understood that that was the argument he was  
18 making, did you provide him with a copy of any notice of right  
19 to rescind to say, 'Gee, that's your allegation? Here's the  
20 document. It's a single page. Mr. Lloyd signed it'?

21 A. Thinking in that moment that I'm going to send him a single  
22 document that's going to put this man to rest when what is - no,  
23 no. That's - it would have been useless. I mean, like I say,  
24 his whole thing is to drive the wedge to try to get me to stop.  
25 And certainly if it wasn't that he would go off onto another

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1 tangent.

2 Again, as I say, he was predominantly: Don't settle.

3 You know, I hate to say it, to rack up fees. I don't know. You

4 know, you tell me. I don't know what was going on in his mind,

5 but I do know that definitely that was - that was his intent.

6 Q. Isn't it actually true that you never had any discussions  
7 concerning 1695 and the only reason you're saying you did now is

8 because Mr. Pahl could not enforce the settlement agreement

9 under 1542 as an absolute claim?

10 A. Not true at all.

11 Q. But you can't show any documents evidencing this very  
12 important right -

13 MR. PAHL: Your Honor, I think that I'll object -

14 BY MR. GOODRICH:

15 Q. - that you thought -

16 MR. PAHL: I think we've now asked this question -

17 I've been -

18 THE COURT: I think there's no writing and he's

19 already said there's no writing.

20 MR. PAHL: And I think that's been said five times,  
21 been asked and answered five times. I've been keeping chicken  
22 scratches here.

23 THE COURT: Okay.

24 BY MR. GOODRICH:

25 Q. Did it ever occur to you to provide that document that you

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1 claim you have showing there has been conformity with the  
2 requirement of 1695?

3 MR. PAHL: I don't -- again, --

4 THE COURT: I think he's already answered that.

5 MR. GOODRICH: Well, I'm asking if it even occurred to  
6 him.

7 MR. PAHL: I objecting it's irrelevant.

8 THE COURT: Okay. You can ask whether it occurred to  
9 him.

10 Did it occur to you?

11 THE WITNESS: No, it hadn't. No.

12 THE COURT: Okay.

13 BY MR. GOODRICH:

14 Q. Isn't it true that it didn't occur to you...

15 MR. PAHL: Your Honor, this is argumentative.

16 THE COURT: Ask the question. Your objection, I know  
17 what your objection's going to be. Let's hear the end of the  
18 question.

19 BY MR. GOODRICH:

20 Q. Isn't it true that it didn't occur to you because Mr. Blum  
21 never mentioned it?

22 A. I have already stated that that's not correct.

23 THE COURT: It's a fair question.

24 BY MR. GOODRICH:

25 Q. So you're saying that Mr. Blum actually mentioned 1695 of

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1 the Civil Code?

2 A. That's how we were able to look it up.

3 Q. Well, I thought you knew about 1695 of the Civil Code before  
4 Mr. Blum mentioned it to you?

5 A. We certainly did know about that.

6 Q. Well, do you recall at your deposition...

7 THE WITNESS: May I make a statement? If -

8 THE COURT: No.

9 THE WITNESS: No.

10 THE COURT: You have to wait for questions.

11 BY MR. GOODRICH:

12 Q. I asked you in your deposition on December 7th, 2005, I  
13 said, "He cited," meaning Mr. Blum, "He cited 1695?"

14 And you answered, "I don't" re- -

15 MR. PAHL: Objection. It's highly inappropriate,  
16 highly improper, violates the Federal Rules of Evidence to cite  
17 a deposition without providing the Court, A, with a copy of the  
18 deposition, B, - he can use it for any purpose - and citing the  
19 page and line.

20 THE COURT: Do you have a copy?

21 MR. GOODRICH: Yeah. We actually have an original and  
22 a certified copy.

23 THE COURT: Okay. You have a copy, I see?

24 MR. PAHL: I do have a copy.

25 THE COURT: Okay. All right.

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1 MR. GOODRICH: It starts at page 80, line 23.

2 THE COURT: Okay.

3 MR. GOODRICH: The certified copy for the Court.

4 MR. PAHL: I'm sorry. The certified copy should be in  
5 a sealed container.

6 MR. GOODRICH: I got that.

7 MR. PAHL: Your Honor, the appropriate methodology  
8 would be for counsel to lodge both originals with the Court and  
9 for the Court to utilize the originals rather than utilizing  
10 counsel's copy.

11 MR. GOODRICH: Beginning at trial it was suggested -  
12 just that.

13 THE COURT: Here, I'll get it open. Here, just hand  
14 it to me. I'm not gentle with these envelopes.

15 Is this the same volume? I believe it is. Okay. I  
16 think you're on page 80, you said?

17 Is that where you wanted to be?

18 MR. GOODRICH: 80.

19 BY MR. GOODRICH:

20 Q. Starting with line 16, this is my question: "Prior to  
21 execution of the settlement agreement you say in discussions  
22 with Mr. Blum that he mentioned the Equity Purchase Act."

23 You answer, "He felt that the - it would all be  
24 rescinded."

25 "QUESTION: Did he actually say the words 'Equity

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1 Purchase Act'?

2 "ANSWER: He stated the laws, yeah, he did. Yeah.

3 "QUESTION: He cited 1695?

4 "ANSWER: I don't recall him citing the codes to me,  
5 but he certainly told me under where I would find the problems,  
6 you know.

7 "QUESTION: Did he say one major item was that you  
8 didn't have a written contract with a notice of rescission  
9 that's required under 1695?

10 "ANSWER: He told me I had many problems.

11 "QUESTION: He didn't get into details?

12 "ANSWER: No. I can't recall him saying that there  
13 was an issue of, you know, the cancellation notice, or anything  
14 specific to that."

15 MR. PAHL: I'm sorry, Your Honor, could we have the  
16 whole answer read?

17 BY MR. GOODRICH:

18 Q. "But he certainly was aware" —

19 THE COURT: Yes. Yes.

20 BY MR. GOODRICH:

21 Q. — "of what my problems were, which created a problem for me  
22 of trying to get this thing hammered out. Because, again, if  
23 your attorney's telling you that he might be able to unwind this  
24 whole thing, it could be kind of difficult putting something  
25 together."

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1 Do you recall that testimony?

2 A. Yeah, I mean if it's there, I can't remember it, no.

3 Q. Okay. Is that testimony accurate?

4 A. Yes, I would say it's accurate.

5 Q. So Mr. Blum didn't mention 1695 by code section?

6 A. If you notice what you read in there is you said to me that  
7 he - he noted - he had noted it to me again, and I wish I had it  
8 in front of me while you were reading it, but I could point out  
9 to you as you were reading it one of the things that struck me  
10 is the fact that you had mentioned in there that he could - he  
11 was able to direct me where it was.

12 Now how else would I - you know, what I'm saying is he  
13 can direct me right where to go find where I'm going to have all  
14 these problems. And he's more than happy to do such in order  
15 to, like, as I say, to put the fear in me and... so, that's  
16 pretty -

17 Q. But other than what you're claiming, which is that he  
18 directed you somehow to the code section, he didn't actually  
19 discuss specifically the failure to give a notice of right to  
20 rescind, correct?

21 A. I - I can't quote that, but I would almost have to assume  
22 that he would certainly bandy around the different problems  
23 within the - within the code. As I said to you, he told me I  
24 had numerous, so, you know, -

25 Q. But you don't recall -

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1 A. - to toss -

2 Q. - specific problem that he described?

3 A. No, I mean, like I say, you know, he's - he had many. I'm  
4 sure he cited it, I'm sure he brought it up to me. Again, like  
5 I say, his -

6 Q. Why are you sure?

7 A. Well, again, -

8 Q. You don't have any notes.

9 A. No.

10 Q. You didn't send any letters.

11 A. I'm thinking of what an attorney would do if he's going to  
12 call me and tell me where I've got a problem, he's going to try  
13 to cite to me as to why I have a problem.

14 Q. But you don't have any specific recollection that he did  
15 that?

16 A. He did not - he did not put it in writing, no.

17 Q. No, no. You don't have a specific recollection that he did  
18 that, you're just saying, 'I assume he did'?

19 A. Well, it's more than just an assumption, that's what I'm  
20 saying. I mean it's kind of like what we're doing is dancing  
21 around this large issue, but the issue all goes back down to  
22 that one item and we're all looking for that one magic number of  
23 1695. And the only way - although the 1695 is where it's  
24 written, everything that we're talking about is going to this  
25 one area.



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1           So it's like, you know, -- it's kind of -- I mean it's  
2 like you're beating the dead horse. You're going, 'Look, we're  
3 all talking about the same thing, but because you specifically  
4 didn't mention that was an Eichler house and you just said it  
5 was house, then that -- therefore probably didn't know' -- you  
6 know what I'm saying? I mean it's mincing of words to me.

7 Q. Well, isn't it fair to say that you were interested in just  
8 a complete settlement and so you weren't really giving it much  
9 thought as to what you were getting on the other end of the  
10 release, you were getting release of everything?

11 A. Oh, absolutely, I thought I was getting release of  
12 everything.

13 Q. And you certainly weren't telling Mr. Blum where he could go  
14 to find provisions of a law that would benefit his client,  
15 right?

16 A. Well, that's not -- let's put it this way. In this  
17 particular instance it didn't happen as such, but I don't think  
18 that would be my job to educate another individual attorney on  
19 how he can come after me, no.

20 Q. No. But under 1695 you understood, didn't you, that you had  
21 to give that up, that notice?

22 A. Correct.

23 Q. And you weren't giving it to him then?

24 A. Well, he -- he didn't demand that I send the paperwork over  
25 to him. He's not saying -- all his paperwork's in -- you know, I